

AMENDED IN ASSEMBLY APRIL 8, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2014

Introduced by Assembly Member Alejo

February 20, 2014

An act to add ~~Chapter 8 (commencing with Section 11050) to Part 1 of Division 3 of the Unemployment Insurance Code, relating to undocumented workers~~ *Article 1.5 (commencing with Section 19535) to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2014, as amended, Alejo. Undocumented workers: ~~California Agricultural and Service Worker Act. Taxation: undocumented immigrants.~~

Existing law establishes the Franchise Tax Board and prescribes its various powers and duties regarding, among other things, the administration of state personal income taxes and requires that an income tax return be filed by every individual who has income in excess of specified amounts. Existing law allows an income tax return to be filed with the Franchise Tax Board using an individual taxpayer identification number.

This bill would require the Franchise Tax Board to, among other things, advertise the availability of filing an income tax return using an individual taxpayer identification number, to provide a receipt or proof of filing to those persons filing an income tax return using an individual taxpayer identification number, and to annually prepare a

report to the Legislature and Governor including information regarding those persons. This bill would also provide that it is unlawful for any employee of the Franchise Tax Board, or other specified government employees, to reveal the identity of any person who has filed an income tax return using an individual taxpayer identification number absent a court order or statutory authorization.

The California Constitution provides that the powers of state government are legislative, executive, and judicial. Existing law requires that the Governor see that the law is faithfully executed. Existing law provides that the Governor is the sole official organ of communication between the state and the government of any other state or of the United States. Existing federal law regulates immigration.

This bill would require the Governor to request that the President of the United States direct the Department of Homeland Security, the United States Immigration and Customs Enforcement, and other relevant federal agencies to not expend resources within the interior of California to apprehend, detain, or remove any person who has filed a California state income tax return using an individual taxpayer identification number, as provided.

~~Federal law regulates immigration and state laws that regulate immigration are preempted. Existing state law, the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975, grants agricultural employees the right to form and join labor organizations and engage in collective bargaining with respect to wages, terms of employment, and other employment conditions.~~

~~This bill would require the Employment Development Department and the Department of Food and Agriculture to convene a working group to consult with the United States Department of Homeland Security and the United States Department of Justice in order to determine the legal roles and responsibilities of federal and state agencies in implementing a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California. The bill would require the working group to create a report expressing its recommendations, which would be required to incorporate specified provisions describing a model program, and the bill would require the report to be submitted to the Legislature and the Governor. The bill would require the Governor, using the report, to either make a formal request to the federal government to implement a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California~~

~~or issue an explanation as to why a formal request was not made and make recommendations to the Legislature for how a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California should be structured.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *The Legislature finds and declares that the*
2 *full recovery of the California economy depends upon the continued*
3 *residence and employment of all current and future members of*
4 *the state workforce, whether currently employed or in the process*
5 *of education or training for future employment.*
6 (b) *The Legislature further finds that the removal of residents*
7 *and employees, who are free of any serious criminal history or*
8 *criminal misconduct, from the state during this time of economic*
9 *recovery is disruptive of the nascent recovery, and separates and*
10 *disrupts families and community, with significant secondary effects*
11 *on the state economy and the state education system.*
12 (c) *The Legislature recognizes and acknowledges the federal*
13 *government's exclusive authority in the area of immigration*
14 *regulation, including the determination of enforcement priorities*
15 *and the granting of discretionary relief on an individual or class*
16 *wide basis.*
17 (d) *The Legislature further finds that the failure of the Congress*
18 *to act on much-needed federal legislation to provide relief from*
19 *deportation and a pathway to citizenship for those millions of*
20 *undocumented persons who have resided peacefully in California*
21 *and other states for many years, raising families, paying taxes,*
22 *and contributing to our economy and society, has perpetuated a*
23 *structural problem in our state economy, with too many workers*
24 *intimidated from playing a complete role in our social and*
25 *economic development by the lack of legal protection occasioned*
26 *by their status.*
27 (e) *The Legislature further finds that, despite these impediments,*
28 *many undocumented workers have endeavored year after year to*
29 *file California state income tax returns using an individual*
30 *taxpayer identification number.*

1 (f) *The Legislature further finds that encouraging those who*
2 *are not eligible to receive a social security number to file a*
3 *California state income tax return using an individual taxpayer*
4 *identification number is in the best interest of the state, its*
5 *economy, and its tax laws.*

6 SEC. 2. *Article 1.5 (commencing with Section 19535) is added*
7 *to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation*
8 *Code, to read:*

9
10 *Article 1.5. Undocumented Immigrants: State Income Taxes*
11

12 19535. *The Franchise Tax Board shall advertise the availability*
13 *of filing a state income tax return using an individual taxpayer*
14 *identification number by a California resident who is not eligible*
15 *to receive a social security number as this is in the best interest*
16 *of California.*

17 19536. (a) *It shall be unlawful for any employee of the*
18 *Franchise Tax Board or any other employee of any state or local*
19 *government agency to reveal the identity of any natural person*
20 *who has filed a California state income tax return using an*
21 *individual taxpayer identification number absent a court order or*
22 *authorization by statute.*

23 (b) *Subdivision (a) shall not apply to any natural person as to*
24 *whom the Franchise Tax Board has cause to believe has a social*
25 *security number or is eligible for a social security number and is*
26 *fraudulently filing a California state income tax return using an*
27 *individual taxpayer identification number for purposes unrelated*
28 *to the person's ineligibility to receive a social security number.*

29 (c) *The Franchise Tax Board shall do both of the following:*

30 (1) *Collaborate with the Department of Justice to draft any*
31 *necessary regulations relating to the administration of this section.*

32 (2) *Undertake any enforcement action to ensure that the*
33 *confidentiality of information regarding a natural person who has*
34 *filed a California state income tax return using an individual*
35 *taxpayer identification number is maintained to the maximum*
36 *extent possible.*

37 19537. *The Franchise Tax Board shall issue a receipt or proof*
38 *of filing to a taxpayer filing California state income tax returns*
39 *using an individual taxpayer identification number for returns*
40 *filed for taxable years beginning on or after January 1, 2014.*

1 19538. Notwithstanding Section 10231.5 of the Government
2 Code, on or before December 31, 2015, and on or before December
3 31 of each successive year, the Franchise Tax Board shall submit
4 a report to the Legislature and Governor, in compliance with
5 Section 9795 of the Government Code, that includes the number
6 of natural persons who have filed California state income tax
7 returns using individual taxpayer identification numbers, the
8 aggregate taxable income reported by all of those persons, and
9 the aggregate amount of income tax paid by all of those persons
10 with respect to the immediately preceding taxable year.

11 SEC. 3. (a) On or after July 1, 2015, the Governor is
12 authorized and directed to submit, as a ministerial act on behalf
13 of the state, a request to the President of the United States asking
14 that the President direct the Department of Homeland Security,
15 the United States Immigration and Customs Enforcement (ICE),
16 and other relevant federal agencies not to expend resources in the
17 interior of the State of California on the apprehension, detention,
18 or removal of any person deemed to be removable, other than by
19 virtue of a serious or violent felony, unless the person meets one
20 of the priority enforcement criteria set forth in the then-existing
21 ICE policy on civil immigration enforcement. The request shall
22 recite the findings of Section 1 of this measure. The request shall
23 be renewed annually until the federal government enacts legislation
24 addressing the status of undocumented persons who have lived
25 continuously and without significant criminal history in California
26 and other states.

27 (b) On or after July 1, 2015, the Governor is further authorized
28 and directed, as a ministerial act on behalf of the state, to request
29 that the President provide any available waivers, exemptions, or
30 authorizations to provide relief from removal for any persons who
31 have filed a California state income tax return using an individual
32 taxpayer identification number and who can demonstrate that
33 filing by presenting a receipt or proof of filing and who do not fall
34 within any of the priority enforcement criteria set forth in the
35 then-existing ICE policy on civil immigration enforcement. The
36 request shall recite the findings of Section 1 of this measure. The
37 request shall be renewed annually until the federal government
38 enacts legislation addressing the status of undocumented persons
39 who have lived continuously and without significant criminal
40 history in California and other states.

SECTION 1. ~~Chapter 8 (commencing with Section 11050) is added to Part 1 of Division 3 of the Unemployment Insurance Code, to read:~~

~~CHAPTER 8. CALIFORNIA AGRICULTURAL AND SERVICE WORKER PROGRAM~~

~~Article 1. General Provisions~~

~~11050. As used in this chapter:~~

~~(a) "Employee" means an agricultural employee, as defined in Section 1140.4 of the Labor Code, and a person employed to provide domestic services, janitorial or building maintenance services, food preparation services, or housekeeping services.~~

~~(b) "Employer" means an agricultural employer, as defined in Section 1140.4 of the Labor Code, a farm labor contractor, and a service industry employer.~~

~~(c) "Farm labor contractor" means a contractor, as defined in Section 1682 of the Labor Code.~~

~~(d) "Farm labor organization" means a labor organization, as defined in Section 1117 of the Labor Code, that represents employees rendering personal services in connection with the production of agricultural products.~~

~~(e) "Immediate family member" means a spouse or child under 18 years of age or 18 years or older if the child is enrolled in an accredited program as described in paragraph (1) of subdivision (e) of Section 11056.~~

~~(f) "Service industry employer" means a person who is self-employed for the purpose of, or who employs others to, provide domestic services, janitorial or building maintenance services, food preparation services, or housekeeping services.~~

~~(g) "Service labor organization" means a labor organization, as defined in Section 1117 of the Labor Code, that represents employees rendering personal services in connection with the production of service industry products.~~

~~(h) "Undocumented person" means a person who is an unauthorized alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.~~

~~11051. (a) No later than February 1, 2016, the Employment Development Department and the Department of Food and~~

~~Agriculture shall convene a working group to consult with the United States Department of Homeland Security and the United States Department of Justice to determine the legal roles and responsibilities of federal and state agencies in implementing a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California.~~

~~(b) The working group shall consist of representatives from the Employment Development Department, the Department of Food and Agriculture, the Attorney General, two Members of the Senate, two Members of the Assembly, and stakeholders, including, but not limited to, agricultural and service industry employers, farm labor contractors, farm labor organizations, and service labor organizations.~~

~~(c) Issues to be addressed by the working group shall include the following:~~

~~(1) Qualifying criteria for undocumented persons to apply for the program.~~

~~(2) Documentation requirements for applicants.~~

~~(3) A determination of which agency will issue the permits.~~

~~(4) Ensuring security, including through the development of non-tamper-proof work authorization documentation or security procedures and protocols, or all of these methods.~~

~~(5) A determination of the process and the agency that shall conduct background and security checks and the extent background and security checks shall be required.~~

~~(6) A determination regarding the payment that shall be required for the submission and review of applications and background and security checks.~~

~~(7) Protocols regarding tracking of employees under the program.~~

~~(8) Consideration of a renewal process for the work permit.~~

~~(9) Consideration of the extent to which employees will be allowed to travel out of the country and the requirements for that travel.~~

~~(10) Determination of a fee structure to cover the costs of the program, including who will pay and how often the fee shall be assessed to cover costs of the program.~~

~~(11) Determination of the costs involved in receiving, processing, and issuing work permits.~~

~~(12) Any other procedures and legal requirements associated with the implementation of the program required by the federal government to ensure the proper role and responsibilities of the State of California.~~

~~(d) The working group shall create a report expressing its recommendations, which shall incorporate the model program described in Article 2 (commencing with Section 11055). This report shall be submitted to the Legislature and the Governor no later than July 1, 2016.~~

~~(e) By August 1, 2016, the Governor, using the report described in subdivision (d), shall either make a formal request to the federal government to implement a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California, or issue an explanation as to why a formal request was not made and make recommendations to the Legislature for how a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California shall be structured.~~

~~(f) If the federal government approves or adopts a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California, it is the intent of the Legislature to enact necessary implementing legislation.~~

~~Article 2. Model Program Requirements~~

~~11055. It is the intent of the Legislature that the provisions of this article provide a model and framework for a program to provide undocumented persons who are agricultural or service industry employees with a permit to work and live in California.~~

~~11056. (a) The program shall not be implemented until:~~

~~(1) The federal authorization necessary for its lawful application is received.~~

~~(2) A certification is made that not enough legal residents in California will fill all open agricultural and service industry jobs in California.~~

~~(b) The program shall be limited to undocumented persons who meet all of the following criteria:~~

~~(1) The undocumented person shall be 18 years of age or older.~~

~~(2) The undocumented person shall live in California.~~

1 ~~(3) (A) The undocumented person shall have performed~~
2 ~~agricultural or service industry employment in the United States~~
3 ~~for at least 863 hours or 150 workdays during the 24-month period~~
4 ~~ending on January 25, 2016, or earned at least seven thousand five~~
5 ~~hundred dollars (\$7,500) from agricultural or service industry~~
6 ~~employment in the United States, and shall have maintained~~
7 ~~agricultural or service industry employment for 431 hours or 75~~
8 ~~workdays, or earned three thousand seven hundred fifty dollars~~
9 ~~(\$3,750) from that employment, on an annual basis after receiving~~
10 ~~the permit.~~

11 ~~(B) An undocumented person shall be allowed to conclusively~~
12 ~~establish employment status by submitting any of the following~~
13 ~~records demonstrating the employment:~~

14 ~~(i) Records maintained by the Social Security Administration,~~
15 ~~Internal Revenue Service, or any other federal, state, or local~~
16 ~~government agency, an employer, a labor organization, service~~
17 ~~labor organization, or day labor center.~~

18 ~~(ii) Itemized wage statements issued to the employee pursuant~~
19 ~~to Section 226 of the Labor Code.~~

20 ~~(C) An undocumented person who is unable to submit a~~
21 ~~document described in subparagraph (B) shall be allowed to satisfy~~
22 ~~the requirement in subparagraph (A) by submitting at least two~~
23 ~~other types of reliable documents that provide evidence of~~
24 ~~employment, including any of the following:~~

25 ~~(i) Bank records.~~

26 ~~(ii) Business records.~~

27 ~~(iii) Remittance records.~~

28 ~~(D) The program shall be implemented in a manner that~~
29 ~~recognizes and takes into account the difficulties encountered by~~
30 ~~an undocumented person in obtaining evidence of employment~~
31 ~~due to the person's undocumented status, including the crediting~~
32 ~~of work in cases in which an undocumented person has been~~
33 ~~employed under an assumed name.~~

34 ~~(4) The undocumented person shall submit to a fingerprinted~~
35 ~~criminal history background check.~~

36 ~~(5) The undocumented person shall never have been convicted~~
37 ~~of a felony, or three or more misdemeanors, as confirmed by the~~
38 ~~fingerprinted criminal history background check.~~

39 ~~(6) The undocumented person shall pay a fee to cover the costs~~
40 ~~of administering the program.~~

~~(e) The program shall extend to an undocumented person who is an immediate family member of a person to whom a work permit has been issued. The immediate family member shall be required to meet all of the following:~~

~~(1) The immediate family member shall reside with the undocumented person to whom a permit was issued or be enrolled in an accredited two- or four-year college or graduate program in California.~~

~~(2) The immediate family member shall submit to a fingerprinted criminal history background check.~~

~~(3) The immediate family member shall never have been convicted of a felony, or three or more misdemeanors, as confirmed by the fingerprinted criminal history background check.~~

~~(4) The immediate family member shall pay a fee to cover the costs of administering the program.~~

~~11057. Once the program becomes authorized and operational, the following requirements shall apply:~~

~~(a) (1) An official or employee of the state government shall not do any of the following:~~

~~(A) Use information furnished by an applicant for purposes of applying for a permit under the program or any information provided by an employer or former employer for any purpose other than to make a determination on the application.~~

~~(B) Make any publication in which the information furnished by any particular individual can be identified.~~

~~(C) Permit a person other than a sworn officer or employee of the state to examine individual applications.~~

~~(2) Information furnished by an applicant shall be provided to both of the following:~~

~~(A) A duly recognized state law enforcement entity in connection with a criminal investigation or a prosecution, if the information is requested in writing by the entity.~~

~~(B) An official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of the individual resulted from a crime.~~

~~(3) Any person who files an application under the program and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing that it contains any false, fictitious, or fraudulent~~

1 ~~statement or entry shall be disqualified from applying under the~~
2 ~~program.~~

3 ~~(b) The entities administering the program shall ensure that~~
4 ~~employers employing workers authorized under the program make~~
5 ~~each of the following assurances:~~

6 ~~(1) That the job opportunity for which an employer employs an~~
7 ~~undocumented person authorized under the program is not vacant~~
8 ~~because a worker is involved in a strike, lockout, or because of a~~
9 ~~work stoppage in the course of a labor dispute involving the job~~
10 ~~opportunity at the same place of employment.~~

11 ~~(2) That the wages and benefits provided to undocumented~~
12 ~~persons working under a permit issued under the program are~~
13 ~~comparable to the wages and benefits provided to legal residents,~~
14 ~~but in no case less than the state minimum wage.~~

15 ~~(3) That an employer participating in the program shall comply~~
16 ~~with all applicable federal, state, and local labor laws, including~~
17 ~~laws affecting migrant and seasonal agricultural workers, with~~
18 ~~respect to all United States workers and undocumented workers.~~

19 ~~(c) An employer of a person permitted to work in this state under~~
20 ~~the program shall provide a written record of employment,~~
21 ~~demonstrating the hours worked and wages paid, to the employee~~
22 ~~issued a permit, and provide a copy of the record to the state.~~

23 ~~11058. (a) An employee permitted to work in this state under~~
24 ~~the program shall be entitled to the same wage, hour, and working~~
25 ~~condition protections provided to an employee who is a legal~~
26 ~~resident of California.~~

27 ~~(b) A permit issued under the program shall not limit an~~
28 ~~employee to a single employer or occupation.~~

29 ~~11059. Not later than three years after the program is~~
30 ~~implemented, the administering entities shall prepare and transmit~~
31 ~~to the Assembly Committee on Labor and Employment and the~~
32 ~~Senate Committee on Labor and Industrial Relations a report,~~
33 ~~consistent with the requirements Section 9795 of the Government~~
34 ~~Code, describing the results of a review of the implementation of,~~
35 ~~and compliance with, the requirements of the program. The report~~
36 ~~shall address and provide information as to all the following:~~

37 ~~(a) Whether the program ensured an adequate and timely supply~~
38 ~~of qualified, eligible workers at the time and place needed by~~
39 ~~employers.~~

- 1 ~~(b) Whether the program ensured that undocumented persons~~
2 ~~authorized to work under the program did not displace eligible,~~
3 ~~qualified United States workers or diminished the wages and other~~
4 ~~terms and conditions of employment of eligible United States~~
5 ~~workers.~~
6 ~~(c) Recommendations for improving the operation of the~~
7 ~~program for the benefit of participating employers, eligible United~~
8 ~~States workers, participating undocumented workers, and~~
9 ~~governmental agencies involved in the administration of the~~
10 ~~program.~~
11 ~~(d) Recommendations for the continuation or termination of the~~
12 ~~program.~~